

REMARKS

This is in response to the Office Action dated September 30, 2009.

I. SUMMARY OF OFFICE ACTION

In the Office Action, the drawings were objected to for various informalities.

Claim 32 was rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 1, 2, 4-7, 9-12, 19, 20, 23, 25-32 were rejected under 35 U.S.C. §102(b) as being anticipated by Christine (U.S. Pat. No. 4,349,133). Also, Claims 1-8, 10, 11, 13-17, 19-23 and 25-32 were rejected under 35 U.S.C. §102(b) as being anticipated by Wade, et al. (U.S. Pat. No. 6,131,773). Claim 18 was rejected under 35 U.S.C. §103(a) as being unpatentable over Wade, et al. in view of Christine. Claims 4 and 24 were rejected under 35 U.S.C. §103(a) as being unpatentable over Bunschoten (EP 0450687) in view of Wade, et al.

II. APPLICANT'S RESPONSE

A. Drawings

Applicant has amended Figures 3 and 4 and introduced new Figures 1A, 1B and 3A. Claim 26 has been cancelled. By these drawing and cancellation of Claim 26, Applicant respectfully submits that the objections to the drawings have been overcome.

B. Claim Rejections – 35 U.S.C. §112

Applicant has cancelled Claim 32. As such, the rejection of Claim 32 has been overcome.

C. Claim 1

In the Office Action, Claim 1 was rejected under 35 U.S.C. §102(b) as being anticipated by Christine or Wade, et al. In the invention recited in Claim 1, the force exerted by the reservoir holder on the dispenser unit for securely mounting the storage container is

applied at an area between the center of gravity of the properly installed and filled dispenser unit in the upper end of the upper volume area. Since the storage container is held above its center of gravity, there is less chance of the storage container tipping over since the storage container is not mounted so as to be top heavy. Moreover, the storage container may be inserted with one hand. Since the storage container is held by the holder above the center of gravity of the storage container, there is less risk that the inserted storage container may tilt forward. Since more than 50% of the weight of the storage container is located below the holder, there is a self stabilizing effect so as to mitigate risk of tilting even if maintenance personnel has not carefully closed the housing or the housing has no locking device but only a swiveling cover.

a. Christine Reference

In Christine, the storage container 39 is held below its center of gravity by way of the holder. Referring now to Figure 1 of Christine, the tube 57 is received into recess 83 to mount the storage container. Accordingly, the storage container disclosed in Christine is mounted so as to be top heavy. Any type of improper mounting of the storage container 39 or closure of the dispenser unit may cause the dispenser to operate improperly. The storage container may inadvertently tip forward and fall out. To properly support the Christine storage container, a large plane setting surface within the housing supporting the storage container is needed. Even if such a setting surface is provided, there is a risk that the storage container will tilt forward inadvertently since the walls of the collapsible storage container appear to be very thin. The front wall may bend or fold due to the fluid pressure and the storage container may tilt and fall out of the housing. In a fast paced production area where storage containers are quickly replaced, it is desirable to ensure that even with improper maintenance, the dispenser will still work without failure.

Moreover, there is no motivation to modify the storage container of Christine so that the force holding the storage container is above its center of gravity. For the recess 83 to apply a mounting force to the storage container 39, the body portion 53 must have a generally rigid area so that such portion can be received into the recess 83. As shown in Figure 1 of Christine, the body portion 53 has a pleated construction 54 which, as understood, allows the body portion 39 to collapse as the substance is dispensed out of the

storage container 39. If the generally rigid material was formed in the body portion 53, then such portion would be incapable of collapsing. Hence, the body portion 53 would be made inoperable for its intended use. MPEP §2143.01(v) recites that “if the proposed modification would render the prior art invention being modified unsatisfactory for its intended use, then there is no suggestion or motivation to make the proposed modification.” For the foregoing reasons, Christine does not disclose, suggest or make obvious the invention recited in Claim 1.

b. Wade, et al. Reference

In relation to Wade, et al., the force mounting the storage container to the dispenser unit is applied to the neck 14 of the storage container. This, as understood, is below the center of gravity of the storage container. Accordingly, the Wade, et al. device is mounted so as to be top heavy similar to Christine. Moreover, the Wade storage container is reclined backward to mitigate inadvertent tilting risk. Hence, Wade, et al. does not disclose all of the limitations recited in Claim 1.

Moreover, there is no motivation to modify the Wade, et al. device such that the neck is located above the center of gravity of the storage container. As understood, the operation of the Wade, et al. device does not make such alternative construction conducive. In particular, during the dispensing step, the pathway 10 is squeezed by roller 10 in the downward direction as shown in Figure 2 (see col. 4, lns. 28-33). To reset the dispenser unit, the resiliency of the pathway returns the unit back to its at rest position. (See col. 4, lns. 33-35). As can be seen in Figure 2 of Wade, et al., the neck 14 is slightly thicker than the entire storage container. The pathway 10 appears to deformable by roller 34. If the neck 14 was moved upward above the center of gravity of the storage container, then the resilient pathway 10 would be much longer than the stroke of the roller 34. As understood, the pathway may stretch unacceptably. Accordingly, the Wade, et al. device may not operate in its intended way. Additionally, to regain any lost storage capacity of the storage container, the storage container would have a lower volume, one above the neck, and one below the neck with the pathway 10 extending below the lower volume. The Wade, et al. device would require extensive redesign in order to make the device operable for such use. MPEP 2143.01(VI)

explains that a substantial redesign may show that the prior art reference is insufficient to render the claims *prima facie* obvious.

For the foregoing reasons, Applicant respectfully submits that Wade, et al. does not disclose, suggest or make obvious the invention recited in Claim 1.

For the foregoing reasons, Applicant respectfully submits that Claim 1 is believed to be in condition for allowance.

The dependent claims of Claim 1 are also believed to be in condition for allowance for containing additional patentable subject matter and for being dependent upon Claim 1 which is believed to be in condition for allowance.

III. CONCLUSION

For the foregoing reasons, Applicant respectfully submits that all pending claims are believed to be in condition for allowance. An early notice of allowance is therefore respectfully requested. Should the Examiner have any suggestions for expediting allowance of the above identified invention, the Examiner is invited to contact Applicant's representative at the telephone number listed below.

If any additional fee is required, please charge Deposit Account Number 19-4330.

Respectfully submitted,

Date: 11/4/10

By: 

Customer No.: 007663

Kit M. Stetina
Registration No. 29,445
STETINA BRUNDA GARRED & BRUCKER
75 Enterprise, Suite 250
Aliso Viejo, California 92656
Telephone: (949) 855-1246
Fax: (949) 855-6371

KMS/JCY/mmm

T:\Client Documents\BUNGA\007US\bunga007usRTOA093009.doc